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8 Attorneys for Shapiro & Sutherland, LLC

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE COUNTY OF JACKSON

12 DENISE and KENNETH COOK, )  
13 Plaintiffs, ) Case No. 10-cv-3121-PA  
14 vs. ) DECLARATION OF KELLY D.  
15 BENEFICIAL OREGON, INC. and ) SUTHERLAND ON DEFENDANT'S  
16 SHAPIRO & SUTHERLAND, LLC ) MOTION FOR SUMMARY  
17 Defendants. ) JUDGMENT

18 I, Kelly D. Sutherland, am over the age of 18, under penalty of perjury, state as follows:

19 1. I am a licensed Oregon attorney and Managing Partner in the Law Firm of  
20 Defendant Shapiro & Sutherland, LLC, and in the normal course of my business I create and  
21 maintain records for loans for which I am appointed trustee or successor trustee. I am required  
22 to be and I am familiar with the manner in which those records are created and/or maintained.

23 2. I am the Successor Trustee with respect to subject trust deed made by Kenneth L.  
24 Cook and Denise M. Cook, as grantor to Regional Trustee Services, as trustee, in favor of Beneficial  
25 Oregon Inc., as beneficiary, dated March 8, 2007, recorded March 12, 2007, in the mortgage records of

26 DECLARATION OF KELLY D. SUTHERLAND ON  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT -1

SHAPIRO & SUTHERLAND, LLC  
KELLY D. SUTHERLAND

5501 NE 109<sup>th</sup> Court, Suite N  
Vancouver, Washington 98662  
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1 Josephine County, Oregon, as Instrument No. 2007-004995, as covering the following described real  
2 property:

3 Beginning at the West quarter corner of Section 9, Township 37 South, Range 7 West of the  
4 Willamette Meridian, Josephine County, Oregon; thence North 89°36'45" East 2664.34 feet to the  
5 center of said Section; thence North 0°51'20" East 334.25 feet to the point of beginning; thence  
6 South 89°36'45" West 1332.17 feet to the West line of the East half of the Northwest quarter of said  
7 Section; thence North 00°49'30" East 500.46 feet; thence North 89°36'45" East 1332.17 feet to the  
8 North-South centerline of said Section; thence South 00°51'20" West 500.46 feet along said  
9 centerline to the true point of beginning. EXCEPTING THEREFROM any portion lying within the  
10 boundaries of a parcel of land in the Northwest quarter of Section 9, Township 37 South, Range 7  
11 West of the Willamette Meridian, Josephine County, Oregon, described as follows: beginning at the  
12 center point of said Section 9 and running North 0°21' East along the North-South centerline of said  
13 Section, 334.25 feet to the point of beginning; thence North 0°21' East along the North-South  
14 centerline of said Section, 1002.75 feet to the South line of the North half of the Northwest quarter of  
15 said Section; thence along said South line of the North half of the Northwest quarter, South 89°37'  
16 West 572.20 feet to the approximate centerline of the public roadway; thence along said public  
17 roadway centerline, South 22°39' East 1095.35 feet; thence North 89°37' East 188.05 feet to the  
18 North-South centerline of said Section 9 to the true point of beginning.

19                   And property commonly known as 300 Newt Gulch Road, Wilderville, OR 97543  
20                   (the "Property").

21                   3. Kenneth L. Cook and Denise M. Cook, the grantors of the Deed of Trust,  
22 breached the terms of the Note and Deed of Trust by their failure to make the monthly payments  
23 on the Note and Deed of Trust. Therefore, the Note and Deed of Trust were in default. As a  
24 result, our office was asked to conduct a non-judicial foreclosure of the Trust Deed.

25                   4. I was appointed Successor Trustee by Beneficial Oregon, Inc. A true copy of  
26 the recorded Substitution of Trustee is attached as Exhibit "A" and by this reference  
incorporated herein.

27                   5. At the request of the beneficiary I recorded a Notice of Default and Intent to Sell,  
28 establishing the Trustee's Sale date for December 2, 2010. A true copy of that recorded  
29 instrument is attached as Exhibit "B" and by this reference incorporated herein.

30                   DECLARATION OF KELLY D. SUTHERLAND ON  
31 DEFENDANT'S MOTION FOR SUMMARY  
32 JUDGMENT -2

33                   SHAPIRO & SUTHERLAND, LLC  
34                   KELLY D. SUTHERLAND

35                   5501 NE 109<sup>th</sup> Court, Suite N  
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39                   ksutherland@logs.com

1       6. As detailed in the Trustee's Affidavit as to Compliance to ORS 86.737, I served  
 2 the "Danger Notice" required under ORS 86.737 to the Plaintiffs and occupant, by certified  
 3 mail, return receipt requested, and first class mail on July 28, 2010. A true and accurate copy  
 4 of the Trustee's Affidavit of Compliance is included in the Affidavit Package is attached hereto  
 5 as Exhibit "C."  
 6

7       6. As detailed in the Affidavit of Mailing of Notice of Sale, pursuant to ORS  
 8 86.740(1)(a), I served the Notice of Sale to Plaintiffs by certified mail, return receipt  
 9 requested, and first class mail on July 30, 2010. A true and accurate copy of the Affidavit of  
 10 Mailing is included in the Affidavit Package is attached hereto as Exhibit "C."  
 11

12       7. As detailed in the Affidavit of Mailing and Affidavit of Posting, pursuant to ORS  
 13 86.750, process servers, acting on behalf of the Successor Trustee, attempted to personally  
 14 serve the Occupants twice, posting the Notice of Sale at the Property once on July 31, 2010  
 15 and personally served Kenneth Cook on August 3, 2010. A true and accurate copy of the  
 16 Affidavit of Service is included in the Affidavit Package is attached hereto as Exhibit "C."  
 17

18       8. As authorized by ORS 86.755(2), I postponed the Trustee's Sale scheduled for  
 19 December 2, 2010 to December 17, 2010. Said sale was postponed by public proclamation  
 20 by my authorized agent. The Trustee's sale scheduled for December 17, 2010 was postponed  
 21 by public proclamation by my authorized agent to January 5, 2011. True and accurate copies  
 22 of the Certificate of Postponement for each sale are attached hereto as Exhibit "D".  
 23

24       9. On January 5, 2011, the Trustee's Sale was held and Beneficial Oregon, Inc. was  
 25 the successful bidder with a credit bid of \$146,015.99. On January 11, 2011, our office  
 26 delivered the Trustee's Deed conveying the Property to Beneficial Oregon, Inc. True and

DECLARATION OF KELLY D. SUTHERLAND ON  
 DEFENDANT'S MOTION FOR SUMMARY  
 JUDGMENT -3

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 KELLY D. SUTHERLAND

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1 accurate copies the Certificate of Sale at Public Auction and the recorded Trustee's Deed are  
2 attached hereto as Exhibit "E" and "F".

3 I have substantial experience in the conduct of non-judicial foreclosures of residential  
4 real property in Oregon, and the foreclosure and sale were in all respects conducted in  
5 accordance with Oregon law.  
6

7 **I hereby declare that the above statement is true to the best of my knowledge  
8 and belief, and that I understand it is made for use as evidence in court and is subject to  
9 penalty of perjury.**

10 DATED this 5th day of March, 2011

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12 Kelly D. Sutherland, OSB 873575  
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DECLARATION OF KELLY D. SUTHERLAND ON  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT -4

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